

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 3503-01  
Bill No.: HB 1403  
Subject: Contracts - Contractors; Architects; Engineers; Property, Real and Personal  
Type: Original  
Date: January 28, 2002

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**FISCAL SUMMARY**

ESTIMATED NET EFFECT ON STATE FUNDS			
FUND AFFECTED	FY 2003	FY 2004	FY 2005
None			
<b>Total Estimated Net Effect on <u>All</u> State Funds</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2003	FY 2004	FY 2005
None			
<b>Total Estimated Net Effect on <u>All</u> Federal Funds</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2003	FY 2004	FY 2005
<b>Local Government</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

Numbers within parentheses: ( ) indicate costs or losses.

This fiscal note contains 3 pages.

## FISCAL ANALYSIS

### ASSUMPTION

Officials from the **Office of Administration - Division of Design and Construction, Department of Transportation, Department of Conservation,** and the **Office of the State Courts Administrator** assume the proposed legislation would have no fiscal impact on their office.

<u>FISCAL IMPACT - State Government</u>	FY 2003 (10 Mo.)	FY 2004	FY 2005
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	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
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<u>FISCAL IMPACT - Local Government</u>	FY 2003 (10 Mo.)	FY 2004	FY 2005
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	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
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### FISCAL IMPACT - Small Business

This proposal would have direct fiscal impact on small businesses operating as contractors or subcontractors, or small businesses utilizing contractors.

### DESCRIPTION

This proposal allows owners in private building contracts to retain a portion of payment due to a contractor in order to ensure the proper performance of the contract. The proposal limits retainage to 5% of the contract. The contractor may give the owner a substitute security and demand payment of the retainage. Subcontractors may do the same with contractors. The proposal sets forth the types of securities that will satisfy the requirement, including certificates of deposit, retainage bonds, and unconditional letters of credit. Contractors are entitled to any income earned from the securities while deposited with the owner. Contractors may not withhold extra retainage from a subcontractor, unless the subcontractor's performance is not in accordance with the terms of the subcontract. Contractors must pass along to any subcontractors the retainage they are paid on a pro rata basis. Subcontractors may be released prior to completion of the entire project, and contractors may request

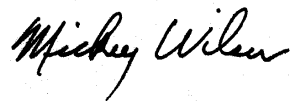
an adjustment in retainage necessary to pay these subcontractors in full. Within 30 days of the DESCRIPTION (continued)

substantial completion of the project, all retainage or substitute security must be released by the owner to the contractor, less 150% of the costs to complete any remaining items. Upon receipt of this retainage, contractors must release the subcontractor's share of the retainage within seven days. Construction contracts will be unenforceable to the extent that they are inconsistent with the requirements of the proposal. If retainage is withheld wrongfully, a court may award interest on the amount at 1 1/2% per month plus attorney's fees. Contracts for the construction of residential buildings with four or fewer units are exempt from the proposal.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

#### SOURCES OF INFORMATION

Office of Administration - Division of Design and Construction  
Department of Transportation  
Department of Conservation  
Office of the State Courts Administrator



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Acting Director

January 28, 2002